

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #6	CCRB Case #: 201708676	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 09/21/2017 1:35 PM	Location of Incident: 31 Fleet Walk; PSA 3 stationhouse	Precinct: 88	18 Mo. SOL 3/21/2019	EO SOL 3/21/2019	
Date/Time CV Reported Thu, 10/19/2017 4:00 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/19/2017 4:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Gaijindrah	29785	960563	PSA 3
2. SGT Herbert Bonilla	02444	932346	PSA 3
3. POF Whitney Merizalde	11971	956928	PSA 3

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alexander Malave	06056	949243	PSA 3
2. POM Matthew Vitale	15902	945086	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A.SGT Herbert Bonilla	Force: At 31 Fleet Walk in Brooklyn, Sergeant Herbert Bonilla used a chokehold against § 87(2)(b)	
B.SGT Herbert Bonilla	Force: At 31 Fleet Walk in Brooklyn, Sergeant Herbert Bonilla restricted § 87(2)(b)'s breathing.	
C.SGT Herbert Bonilla	Force: At 31 Fleet Walk in Brooklyn, Sergeant Herbert Bonilla used physical force against § 87(2)(b)	
D.POF Whitney Merizalde	Force: At 31 Fleet Walk in Brooklyn, Police Officer Whitney Merizalde used physical force against § 87(2)(b)	
E.POM Anthony Gaijindrah	Force: At 31 Fleet Walk in Brooklyn, Police Officer Anthony Gaijindrah used physical force against § 87(2)(b)	
F.POF Whitney Merizalde	Force: At 31 Fleet Walk in Brooklyn, Police Officer Whitney Merizalde restricted § 87(2)(b)'s breathing.	
G.POM Anthony Gaijindrah	Force: At the PSA 3 stationhouse, Police Officer Anthony Gaijindrah used physical force against § 87(2)(b)	
H.POF Whitney Merizalde	Force: At the PSA 3 stationhouse, Police Officer Whitney Merizalde used physical force against § 87(2)(b)	

Case Summary

On October 19, 2017, § 87(2)(b) filed this complaint with the CCRB via telephone. This case was closed on October 23, 2017, as § 87(2)(g).” On August 8, 2018, this case was reopened upon receipt of a written request from § 87(2)(b).

On September 21, 2017, at approximately 1:35 p.m., § 87(2)(b) was arrested for trespassing inside of 31 Fleet Walk in Brooklyn, by Sgt. Herbert Bonilla, PO Anthony Gaijindrah, and PO Whitney Merizalde, of PSA 3. Before being placed inside the police vehicle, Sgt. Bonilla grabbed § 87(2)(b) by the neck, restricting her breathing, and lifted her off of the ground (**Allegations A and B: Force**, § 87(2)(g)). The officers pushed her into the back of the police vehicle (**Allegations C through E: Force**, § 87(2)(g)). Sgt. Bonilla continued choking § 87(2)(b) (subsumed under **Allegations A and B**) and was punching § 87(2)(b) in the ribs, back, buttocks, and head (subsumed under **Allegation C**). While § 87(2)(b) was in the back seat of the police vehicle, PO Merizalde placed her hand over § 87(2)(b)’s mouth, restricting her breathing (**Allegation F: Force**, § 87(2)(g)).

PO Alexander Malave and PO Matthew Vitale, of PSA 3, transported § 87(2)(b) back to the PSA 3 stationhouse. At the PSA 3 stationhouse, PO Gaijindrah pushed § 87(2)(b) to the ground in the cell, punched her in the face, and kicked her (**Allegation G: Force**, § 87(2)(g)). PO Malave punched § 87(2)(b) when she attempted to get off the ground (**Allegation H: Force**, § 87(2)(g)). § 87(2)(b) was transported to § 87(2)(b) from Brooklyn Central Booking.

Video of this incident was received from NYCHA (Board Review 2-3).

Findings and Recommendations

Allegation (A) Force: At 31 Fleet Walk in Brooklyn, Sergeant Herbert Bonilla used a chokehold against § 87(2)(b)

Allegation (B) Force: At 31 Fleet Walk in Brooklyn, Sergeant Herbert Bonilla restricted § 87(2)(b)’s breathing.

§ 87(2)(b) (Board Review 04) stated that after she was arrested inside 31 Fleet Walk in Brooklyn, Sgt. Bonilla, PO Merizalde, and PO Gaijindrah walked her outside to their police vehicle. § 87(2)(b) was in handcuffs the entire time and denied that she was able to resist as a result of being restrained. § 87(2)(b) and Sgt. Bonilla got into an argument, but § 87(2)(b) could not remember specifically what they said. Sgt. Bonilla walked over to § 87(2)(b) grabbed the front of her neck with his hand, restricting her breathing, and lifted her up so her feet were no longer touching the ground. § 87(2)(b) stated that Sgt. Bonilla never let go of her neck and continued to choke her while punching her and pushing her into the vehicle.

§ 87(2)(b) refused to provide the names or contact information for any people she thought may have witnessed the incident. Therefore, no civilian witnesses were available for interviews.

Sgt. Bonilla denied that he made contact with § 87(2)(b)’s neck, put pressure on her chest, or did anything to restrict her breathing at any point. Sgt. Bonilla denied that § 87(2)(b) ever complained that she was unable to breathe.

PO Merizalde stated that Sgt. Bonilla never grabbed § 87(2)(b) by her neck and that § 87(2)(b) did not complain that she could not breathe until she was inside of the police vehicle.

PO Gaijindrah’s statement was consistent with Sgt. Bonilla’s.

Video from NYCHA (Board Reviews 1-3) does capture a struggle to place § 87(2)(b) into the police vehicle. However, the video is of poor quality and the struggle occurs so far from the camera that it is not possible to determine what is occurring.

Medical records received from § 87(2)(b) (Board Reviews 12-13) indicate that § 87(2)(b) went to the hospital on the incident date while in police custody and the next day after being released. There were no documented injuries to § 87(2)(b)'s neck during either visit and during the second visit, § 87(2)(b) did not even complain of pain to her neck.

§ 87(2)(g)

Allegation (C) Force: At 31 Fleet Walk in Brooklyn, Sergeant Herbert Bonilla used physical force against § 87(2)(b)

Allegation (D) Force: Allegation C: At 31 Fleet Walk in Brooklyn, Police Officer Whitney Merizalde used physical force against § 87(2)(b)

Allegation (E) Force: At 31 Fleet Walk in Brooklyn, Police Officer Anthony Gaijindrah used physical force against § 87(2)(b)

§ 87(2)(b) stated that after Sgt. Bonilla, PO Merizalde, and PO Gaijindrah pushed her into the back of the police vehicle, Sgt. Bonilla got into the back seat of the police vehicle with § 87(2)(b) and began punching her all over her body, while she was face down in the back seat of the vehicle. Sgt. Bonilla punched § 87(2)(b) in the ribs, back, buttocks, and head. § 87(2)(b) tried to move her body so that Sgt. Bonilla would not punch a location on her ribs where she had an injury from a prior unrelated incident. § 87(2)(b) was unable to estimate how many times Sgt. Bonilla punched her.

§ 87(2)(b) refused to provide the names or contact information for any people she thought may have witnessed the incident. Therefore, no civilian witnesses were available for interviews.

Sgt. Bonilla (Board Review 05) stated that he, PO Merizalde, and PO Gaijindrah walked § 87(2)(b) to the police vehicle without incident. At the vehicle, Sgt. Bonilla and PO Merizalde were on the passenger's side, near the rear door. PO Gaijindrah was on the driver's side to unlock the vehicle. Sgt. Bonilla opened the door to the vehicle. When PO Merizalde was about to place § 87(2)(b) inside the vehicle, one of § 87(2)(b)'s hands slipped out of her handcuffs, and § 87(2)(b) attempted to hit PO Merizalde in the face. § 87(2)(b)'s hand missed, but her handcuff scraped PO Merizalde's temple. Immediately, Sgt. Bonilla struck § 87(2)(b)'s face with his hand, but he did not remember how many times. Sgt. Bonilla struck § 87(2)(b) enough times to get her to stop fighting the officers. Sgt. Bonilla and PO Merizalde grabbed § 87(2)(b)'s hands and put them behind her back. Sgt. Bonilla and PO Merizalde handcuffed § 87(2)(b) against the police vehicle. By the time PO Gaijindrah got to the passenger's side of the vehicle to assist, § 87(2)(b) was already in handcuffs. After being placed in handcuffs, § 87(2)(b) continued to resist by spitting and kicking at officers. § 87(2)(b)'s saliva hit Sgt. Bonilla in the face. Sgt. Bonilla pushed § 87(2)(b) into the vehicle. One of the other officers went to the driver's side and pulled her inside. The officers shut the doors to the police vehicle and § 87(2)(b) began kicking at the window of the car. Sgt. Bonilla got into the front seat of the car and § 87(2)(b) spit through the partition in the police vehicle, getting saliva on the back of Sgt. Bonilla's head. Sgt. Bonilla called for another unit to respond to transport § 87(2)(b) to the stationhouse. Sgt. Bonilla denied that he ever struck § 87(2)(b) inside the police vehicle.

PO Merizalde's statement (Board Review 06) was consistent with Sgt. Bonilla's except where noted below. PO Merizalde stated that § 87(2)(b) punched her in the face, not that the handcuff hit her in the face. PO Merizalde and Sgt. Bonilla grabbed § 87(2)(b)'s arms and pushed her towards the vehicle, attempting to handcuff her. § 87(2)(b) hit Sgt. Bonilla, but PO Merizalde did not remember where. Sgt. Bonilla punched § 87(2)(b) in the face twice, in quick succession, to subdue her. § 87(2)(b) continued to try to strike back between Sgt. Bonilla's punches. § 87(2)(b) attempted to strike Sgt. Bonilla again after he punched her a second time. PO Merizalde and Sgt. Bonilla pushed § 87(2)(b) into the vehicle through the rear passenger door. Sgt. Bonilla was trying to restrain § 87(2)(b) in the vehicle by holding her arms down. PO Merizalde did not remember if Sgt. Bonilla was inside the vehicle with § 87(2)(b) was laying on her back in the back seat with her feet on the driver's side. PO Merizalde moved to the driver's side where she and PO Gaijindrah held down § 87(2)(b)'s feet to prevent her from kicking. Sgt. Bonilla called for another unit to respond, and PO Malave and PO Vitale arrived approximately five minutes later.

PO Gaijindrah's statement (Board Review 07) is consistent with Sgt. Bonilla's except where noted below. PO Gaijindrah stated that he heard a "scuffle" and banging noises when he was on the driver's side of the vehicle. PO Gaijindrah ran to the passenger's side and saw § 87(2)(b)'s left hand was free of the handcuffs and she was swinging both of her arms. As § 87(2)(b) was swinging her hands, she hit PO Gaijindrah's left forearm with her handcuff. § 87(2)(b) also hit Sgt. Bonilla and PO Merizalde with her handcuffs, but PO Gaijindrah did not see where. § 87(2)(b)'s resistance made it difficult to place her inside of the patrol car, but the officers were able to push her legs through the rear passenger's side door while she sat in the back seat. No officer restrained § 87(2)(b) inside of the vehicle. No officer struck § 87(2)(b) inside of the patrol car. The officers entered the vehicle and began to drive away, but some of § 87(2)(b)'s spit landed on Sgt. Bonilla's head, due to the openings in the partition. PO Gaijindrah, Sgt. Bonilla, and PO Merizalde all exited the patrol car. An officer opened the door to the vehicle and § 87(2)(b) began kicking Sgt. Bonilla. PO Gaijindrah called over the radio for another patrol car. PO Gaijindrah, Sgt. Bonilla, and PO Merizalde stood § 87(2)(b) up against the side of their patrol car while they waited for an additional patrol car to arrive. § 87(2)(b) ceased resisting while waiting for the other patrol car. PO Gaijindrah did not see Sgt. Bonilla or PO Merizalde strike § 87(2)(b) at any point.

Video from NYCHA (Board Reviews 1-3) does capture a struggle to place § 87(2)(b) into the police vehicle. However, the video is of poor quality and the struggle occurs so far from the camera that it is not possible to determine what is occurring.

PO Merizalde provided an audio recording that she took on her personal phone of a conversation she had with § 87(2)(b) before § 87(2)(b) was transported to Brooklyn Central Booking (Board Review 08-09). In the recording § 87(2)(b) apologizes to PO Merizalde multiple times. PO Merizalde states that she does not know how § 87(2)(b) got out of her handcuffs. § 87(2)(b) cuts PO Merizalde off stating that she did not intend to swing at PO Merizalde, and that she was trying to swing at "that guy," but everything was too close and too fast.

PO Merizalde provided a photo, taken on the date of this incident, which she stated depicts an injury above her left eyebrow (Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

Force may be used when it is reasonable to place a person in custody. In all circumstances, any use of force must be reasonable under the circumstances. In determining whether the use of force is reasonable, members of the service should consider the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight. Patrol Guide Procedure 221-01, “Force Guidelines” (Board Review 14).

§ 87(2)(g)

Allegation (F) Force: At 31 Fleet Walk in Brooklyn, Police Officer Whitney Merizalde restricted § 87(2)(b) s breathing.

§ 87(2)(b) stated in her CCRB statement that while in the police vehicle, PO Merizalde put her hand over § 87(2)(b) s mouth, preventing her from breathing. § 87(2)(b) was screaming the entire time that she could not breathe. § 87(2)(b) bit PO Merizalde’s hand to try to get her to remove her hand so that she could breathe. In § 87(2)(b) s statement to IAB, she claimed that the officers covered her mouth and nose (Board Review 20).

Sgt. Bonilla did not see PO Merizalde cover § 87(2)(b) s mouth with her hand and denied that § 87(2)(b) ever complained that she was unable to breathe.

PO Merizalde denied that she ever covered § 87(2)(b) s mouth during the incident or did anything to restrict her breathing.

PO Gaijindrah did not see PO Merizalde place her hand over § 87(2)(b) s mouth and nose.

As discussed above, all of the officers testified that § 87(2)(b) had been spitting throughout the struggle. All of the officers stated that they did not do anything to prevent her from spitting.

§ 87(2)(g)

Allegation (G) Force: At the PSA 3 stationhouse, Police Officer Anthony Gaijindrah used physical force against § 87(2)(b)

Allegation (H) Force: At the PSA 3 stationhouse, Police Officer Whitney Merizalde used physical force against § 87(2)(b)

§ 87(2)(b) stated that, once at the stationhouse, PO Gaijindrah and PO Merizalde walked her to the cells, while she was still in handcuffs. PO Gaijindrah pushed § 87(2)(b) into the cell, causing her to fall to the ground. PO Gaijindrah got on top of § 87(2)(b) and punched her in the face. When § 87(2)(b) attempted to get up off the ground, PO Gaijindrah kicked § 87(2)(b). When § 87(2)(b) tried to get up off the ground, PO Gaijindrah kicked § 87(2)(b). When § 87(2)(b) stood back up, PO Merizalde punched § 87(2)(b) in the face.

PO Gaijindrah stated that § 87(2)(b) “lost control” upon learning that she would not receive a Desk Appearance Ticket. While PO Gaijindrah and PO Malave were escorting § 87(2)(b) to the holding cells, she kicked down a computer and physically resisted being placed into the cells. When PO Gaijindrah opened the cell door and walked inside, § 87(2)(b) turned around and kneed PO Malave in the groin, causing PO Malave to double over. PO Gaijindrah and PO Malave were able to successfully place § 87(2)(b) in the holding cells just by walking her in there. PO Gaijindrah denied that § 87(2)(b) was pushed into the cell. § 87(2)(b) did not fall to the ground in the cell. PO Gaijindrah did not strike or kick § 87(2)(b) inside the cell area and did not see any other officer do so. PO Gaijindrah denied pushing § 87(2)(b) to the ground in the cell, straddling her, punching her in the face, or kicking her when she attempted to get up. While PO Gaijindrah was closing the cell door, § 87(2)(b) spat through the cell door. The spit landed on PO Gaijindrah’s neck and shirt.

PO Merizalde stated that she walked behind PO Gaijindrah and PO Malave as they escorted § 87(2)(b) to the cells. PO Merizalde’s statement was consistent with PO Gaijindrah’s statement. PO Merizalde denied that she used any force against § 87(2)(b) at the stationhouse.

PO Malave’s statement (Board Review 19) was consistent with PO Gaijindrah’s and PO Merizalde’s testimonies.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 16).
- Sgt. Bonilla has been a member of the service for 15 years and has been a subject in five CCRB complaints and 11 allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
- PO Merizalde has been a member of the service for four years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
- PO Gaijindrah has been a member of the service for three years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of November 7, 2018, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards to this complaint (Board Review 17).

- § 87(2)(b), § 87(2)(c)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: